

REMARKS/ARGUMENTS

Favorable consideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-19, 22 and 24-34 are presently pending in this application, Claim 23 having been canceled, Claims 1, 7, 10, 11, 17 and 24 having been amended, and Claims 25-34 having been added by the present amendment.

In the outstanding Office Action, Claims 11, 17 and 24 were objected to because of informalities; and Claims 1-19 and 22-24 were rejected under 35 U.S.C. §102(e) as being anticipated by Tanaka (U.S. Patent 6,339,266).

Amended Claims 1, 7, 10, 11, 17 and 24 new Claims 25-34 are fully supported by the specification, drawings and claims as originally filed. Applicant therefore submits that no new matter has been introduced.

In response to the objection to Claims 11, 17 and 24, Claims 11, 17 and 24 have been amended to correct informalities. Accordingly, no further objection on that basis is anticipated.

With regard to the 35 U.S.C. §102(e) rejection based on Tanaka, Applicant respectfully submits that the 35 U.S.C. §102(e) rejection based on Tanaka be withdrawn because of the following reasons.

35 U.S.C. §363 stipulates:

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

Emphasis provided.

Further, MPEP 1895.01 I. A. states as follows:

A. Filing Date As Applicant's Date Of Invention

By virtue of 35 U.S.C. 363, the U.S. filing date of a national stage application is

the international filing date (the filing date of the international application) for the purpose of determining whether information is prior art (i.e., has an effective date) relative to the invention claimed in the national stage application. . . . The **international filing date** is the critical date for determining whether or not a particular reference is available as prior art **against the application**.

Emphasis provided.

In the present case, the present application has the November 30, 1998 international filing date. Therefore, the critical date for determining whether or not the Tanaka reference is available as prior art against the present application is November 30, 1998.

Tanaka is based on a US patent application No. 09/665,055, which is a continuation of an international application No. PCT/JP99/01345.

MPEP 1896 states as follows:

The following section describes the differences between a U.S. national application filed under 35 U.S.C. 111(a), including those claiming benefit of a PCT application under 35 U.S.C. 120 (a **continuation** or a **continuation-in-part** of a PCT application), and a U.S. **national stage application** (*>submitted< under 35 U.S.C. 371).

Emphasis in original.

MPEP 1896 II (C) states as follows:

(C) If the international application has an international filing date prior to November 29, 2000, apply the reference under the provisions of 35 U.S.C. 102 and 374, prior to the AIPA amendments:

(1) For U.S. patents, apply the reference under 35 U.S.C. 102(e) as of the earlier of the date of completion of the requirements of 35 U.S.C. 371(c)(1), (2) and (4) or **the filing date of the later-filed U.S. application that claimed the benefit of the international application**.

Emphasis provided; also see MPEP 2136.03 II.

In the present case, the international application No. PCT/JP99/01345 has the March 18, 1999 international filing date, which is before November 29, 2000. The filing date of the Tanaka application that claimed the benefit of the international application is September 19, 2000, which is **after** the November 30, 1998 international filing date of the present application. Therefore, Tanaka may not be applied as prior art under 35 U.S.C. 102(e) against the present

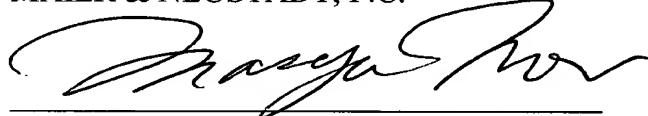
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application. Thus, the 35 U.S.C. §102(e) rejection based on Tanaka should be withdrawn. Further, since the November 30, 1998 international filing date of the present application is before the September 23, 1999 international publication date of the international application No. PCT/JP99/01345, the international application No. PCT/JP99/01345 may not be applied under 35 U.S.C. 102(a) and (b), either.

Consequently, in view of the present amendment and above discussion, it is respectfully submitted that this application is in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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